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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

v.

APPLE INC.,

Defendant, Counterclaimant.

CASE NO. 20-CV-05640-YGR

**APPLE INC.'S SECOND REVISED
TENTATIVE WITNESS LIST**

The Honorable Yvonne Gonzalez Rogers

Trial: May 3, 2021

1 Pursuant to Pretrial Order No. 4 (ECF No. 371) and the Court’s Standing Order re: Pretrial
2 Instructions in Civil Cases, Defendant and Counterclaimant Apple Inc. (“Apple”) serves its
3 Second Revised Tentative Trial Witness List, other than for impeachment or rebuttal, reserving its
4 rights to supplement or amend its list for good cause or in response to Epic Games, Inc.’s (“Epic”)
5 witness list and/or other pre-trial disclosures. Apple also reserves the right to substitute deposition
6 designations for live testimony, and vice versa, including based on the availability or non-
7 availability of any witness to appear at trial.

8
9 DATE: April 26, 2021

GIBSON DUNN & CRUTCHER LLP

10 /s/ Richard J. Doren
Richard J. Doren

11
12 *Attorney for Defendant and Counterclaimant*
13 *Apple Inc.*

APPLE WITNESS LIST

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
<u>Apple Witnesses</u>					
Tim Cook, Chief Executive Officer* ¹	Apple's corporate values; Apple's business and operations; development and launch of the App Store; competition faced by Apple.	1 hour	30 minutes	10 minutes	Live, in person
Craig Federighi, Senior Vice President, Software Engineering*	iOS operating system; competition faced by Apple; Apple's investment and efforts to combat malware, spyware, and other issues relating to app security and iOS device user protection.	2 hours	1 hour	10 minutes	Live, in person
Matt Fischer, Vice President, App Store	Marketing of apps available in the App Store; competitors and competition in the sale of apps and the different app marketplaces; Apple's business	See Epic's list for estimated lengths of examinations.			Live, in person

¹ Primary witnesses who are not included only as a precautionary measure are denoted with an asterisk.

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
	relationships with app developers.				
Eric Gray, Director, Commerce & Payments*	Design and operation of Apple's payment processing policies and practices.	1 hour	15 minutes	5 minutes	Live, in person
Trystan Kosmynka, Senior Director, Marketing*	App Store policies and guidelines; Apple's app review and curation process and procedures; Apple's investment in efforts to protect iOS device users' safety and privacy.	See Epic's list for estimated lengths of examinations.			Live, in person.
Phil Schiller, Apple Fellow*	Apple's business and operations; Development and launch of the App Store; App Store policies and guidelines; the App Store business model; the App Store commission; app distribution; iOS operating system; competition faced by Apple; design, development, launch, and marketing of the iPhone.	6 hours	3 hours	1 hour	Live, in person
Michael Schmid, Head of Game	The tools, services, and benefits that Apple provides to	1 hour	30 minutes	5 minutes	Live, in person.

APPLE INC.'S SECOND REVISED TENTATIVE WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Business* Development, App Store	developers, including to Epic; Apple's relationship with Epic, Epic's breaches of its agreements with Apple, and Epic's other misconduct.				
Document Custodian	Admission of business records and other documents in Apple's possession, as necessary	5 minutes			Live, in person or may request leave to appear remotely.
<u>Epic Witnesses</u>					
Steve Allison, General Manager, Epic Games Store	The Epic Games Store business model and financial projections; the Epic Games Store's revenue split; the Epic Games Store's market share.	See Epic's list for estimated lengths of examinations.			Live, in person, or by deposition designation.

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Andrew Grant, Engineering Fellow	Enforcement of platform rules; <i>Fortnite</i> anti-cheat measures; the importance to Apple's brand of protecting user privacy and security; Epic's use of Apple-provided tools and services; Epic's interest in workarounds to undercut Apple's 30% commission; Epic's efforts to subvert app review; Epic's campaign against app stores.	See Epic's list for estimated lengths of examinations.			Live, in person, or by deposition designation.
Joseph Kreiner, Vice President, Business Development	Benefits of cross-platform play; Epic's relationships with console manufacturers, including contractual terms, commissions paid by Epic, and payment processing terms; fraud on the Epic Games Store.	30 minutes	10 minutes	NA	Deposition Designation.

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Thomas Ko, Senior Director, Head of Online Business Strategy and Operations	Epic's relationship with Samsung, including Epic's contracts with Samsung, commissions paid to Samsung, and communications with Samsung; Epic's campaign against app stores.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person, or by deposition designation.
Mark Rein, Vice President, Business Development	The Epic Games Store business model and commission; benefits of Apple marketing and other support provided to Epic; Epic's plans and practices concerning distribution through iOS, competing platforms, and alternative channels; Epic's campaign against app stores.	15 minutes	5 minutes	NA	Deposition Designation.

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Tim Sweeney, Chief Executive Officer*	Epic's business model, operations, and strategy; Epic's financial performance; Epic's dealings with Apple and competing platforms, including commissions paid; Epic Games Store profitability; Epic's relationship with Samsung, including Epic's contracts with Samsung, commissions paid to Samsung, and communications with Samsung; Epic's campaign against app stores.	See Epic's list for estimated lengths of examinations.			Live, in person.

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Daniel Vogel, Chief Operating Officer	Epic's exploration of sideloading on iOS and Android; Epic's launch of <i>Fortnite</i> outside of the Google Play Store; security of <i>Fortnite</i> and the Epic Games Store, including the Xsolla payment processor; concerns over cross-platform arbitrage of "V-bucks" purchases; Epic's attempts to avoid Apple's App Store review process; Epic's campaign against app stores.	15 minutes	5 minutes	NA	Deposition Designation.
Matthew Weissinger, Vice President, Marketing	Epic's pricing and marketing activities, including as to <i>Fortnite</i> ; <i>Fortnite</i> 's profit margin; <i>Fortnite</i> 's weaknesses on mobile systems relative to game consoles; Epic's campaign against app stores.	See Epic's list for estimated lengths of examinations.			Live, in person, or by deposition designation.
Document Custodian	Admission of business records and other documents in Epic's possession, as necessary	5 minutes			Live, in person or may request leave to appear remotely.

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Joseph Babcock, Former Chief Financial Officer	Epic's financial performance; Epic's business model and strategy; Epic's dealings with Apple and competing platforms, including commissions paid; Epic Games Store profitability.	15 minutes	5 minutes	N/A	Deposition Designation
Haseeb Malik, Marketing Manager (former Epic)	Tools, services, and benefits that Apple provided to Epic; platforms on which Epic makes its games available; Epic's campaign against app stores.	15 minutes	5 minutes	N/A	Deposition Designation
David Nikdel, Lead, Online Gameplay Systems	Engineering and technology benefits received from Apple; quality of non-iOS platforms; Epic's direct payment hotfix.	15 minutes	5 minutes	N/A	Deposition Designation
Nick Penwarden, Vice President, Engineering	The Unreal Engine business model; iOS and Android proprietary software and tools; engineering support from Apple; cross-platform play.	15 minutes	5 minutes	N/A	Deposition Designation

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Alec Shobin, Senior Marketing Manager	Marketing for mobile games; the App Store review process; Epic's campaign against app stores.	15 minutes	5 minutes	N/A	Deposition Designation
<u>Third Party Witnesses</u>					
Lori Wright, Vice President, Xbox Business Development, Microsoft Corporation	The Microsoft Store; Xbox video game console business and operations; Xbox cloud gaming; distribution of apps on the App Store.	See Epic's list for estimated lengths of examinations.			Live, in person.
Benjamin Simon, Founder and Chief Executive Officer, Yoga Buddhi Co.	Yoga Buddhi's apps and business model; tools, services, and benefits that Apple provided to Yoga Buddhi; participation in the Coalition for App Fairness; App Store review process.	See Epic's list for estimated lengths of examinations.			Live, in person.
Shelley Gould, President, Co-Founder, Neuro-Fin d/b/a SmartStops	SmartStops' apps and business model; tools, services, and benefits that Apple provided to SmartStops; App Store review process; communications with Apple.	See Epic's list for estimated lengths of examinations.			Live, in person.

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Aashish Patel, Nvidia Corporation	Tools, services, and support that Apple provided to Nvidia; distribution on competitor platforms and through alternative channels; communications with Apple; compliance with Apple's App Review Guidelines; Nvidia's affiliation with Epic.	See Epic's list for estimated lengths of examinations.			Live, in person.
Document Custodian, Alphabet Inc.	Admission of business records and other documents in Alphabet's possession, as necessary	15 minutes			Live, in person
Document Custodian, App Annie, Inc.	Admission of business records and other documents in App Annie's possession, as necessary	15 minutes			Live, in person
Document Custodian, Roblox Corporation	Admission of business records and other documents in Roblox's possession, as necessary	15 minutes			Live, in person

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Scott Forstall, former Senior Vice President, iOS Software	Differences between mobile devices and PCs; security and privacy considerations for mobile devices; historical App Store policies and practices.	30 minutes	5 minutes	N/A	Deposition Designation
Phillip Shoemaker, former Technology Director, App Review	App Store policies and guidelines; Apple's app review and curation process and procedures; Apple's investment in efforts to protect iOS device users' safety and privacy.	15 minutes	5 minutes	N/A	Deposition Designation
<u>Apple Expert Witnesses</u>					
Richard Schmalensee	<i>See expert disclosures served February 16, 2021 and March 15, 2021</i>	1 hour (with written direct)	1 hour and 45 minutes	30 minutes	Live, in person
Lorin Hitt	<i>See expert disclosures served February 16, 2021 and March 15, 2021</i>	1 hour (with written direct)	1 hour and 45 minutes	30 minutes	Live, in person

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Francine LaFontaine	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	1 hour and 45 minutes	20 minutes	Intends to appear live and in person, but may request leave to appear remotely.
Daniel Rubinfeld	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	1 hour and 45 minutes	20 minutes	Live, in person
James Malackowski	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	1 hour and 10 minutes	20 minutes	Live, in person
Aviel Rubin	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	2 hours and	20 minutes	Live, in person
Dominique Hanssens	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	1 hour	20 minutes	Live, in person

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